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NORCAL WASTE SYSTEMS, INC.

September 9, 2005

Bobbie Garcia  
Permitting and Enforcement  
California Integrated Waste Management Board, MS #16  
1001 I Street  
P.O. Box 4025  
Sacramento, CA 95812-4025

**Subject: Permit Implementation Regulations (Assembly Bill 1497)**

Dear Ms. Garcia,

Thank you for providing an opportunity for public comment on the informal draft of the proposed subject regulations. Norcal Waste Systems, Inc. (Norcal) subsidiaries maintain a host of Solid Waste Facilities Permits (SWFP). Therefore, Norcal is a significant stakeholder in the permit process. We believe this regulatory package, which implements the mandates of AB 1497, is the opportunity to improve the permit process and bring consistent statewide standards to all stakeholders. We fully support the California Integrated Waste Management Board (CIWMB), its mission, and the directives of Assembly Bill 1497. However, at this time, we believe that the processes the informal draft regulatory language describes stray from the mandates of AB 1497 and the requirements of Title 1 of California Code of Regulations (1CCR) §14 and §16, which outline a degree of authority, clarity and consistency with the legislative intent of AB 1497.

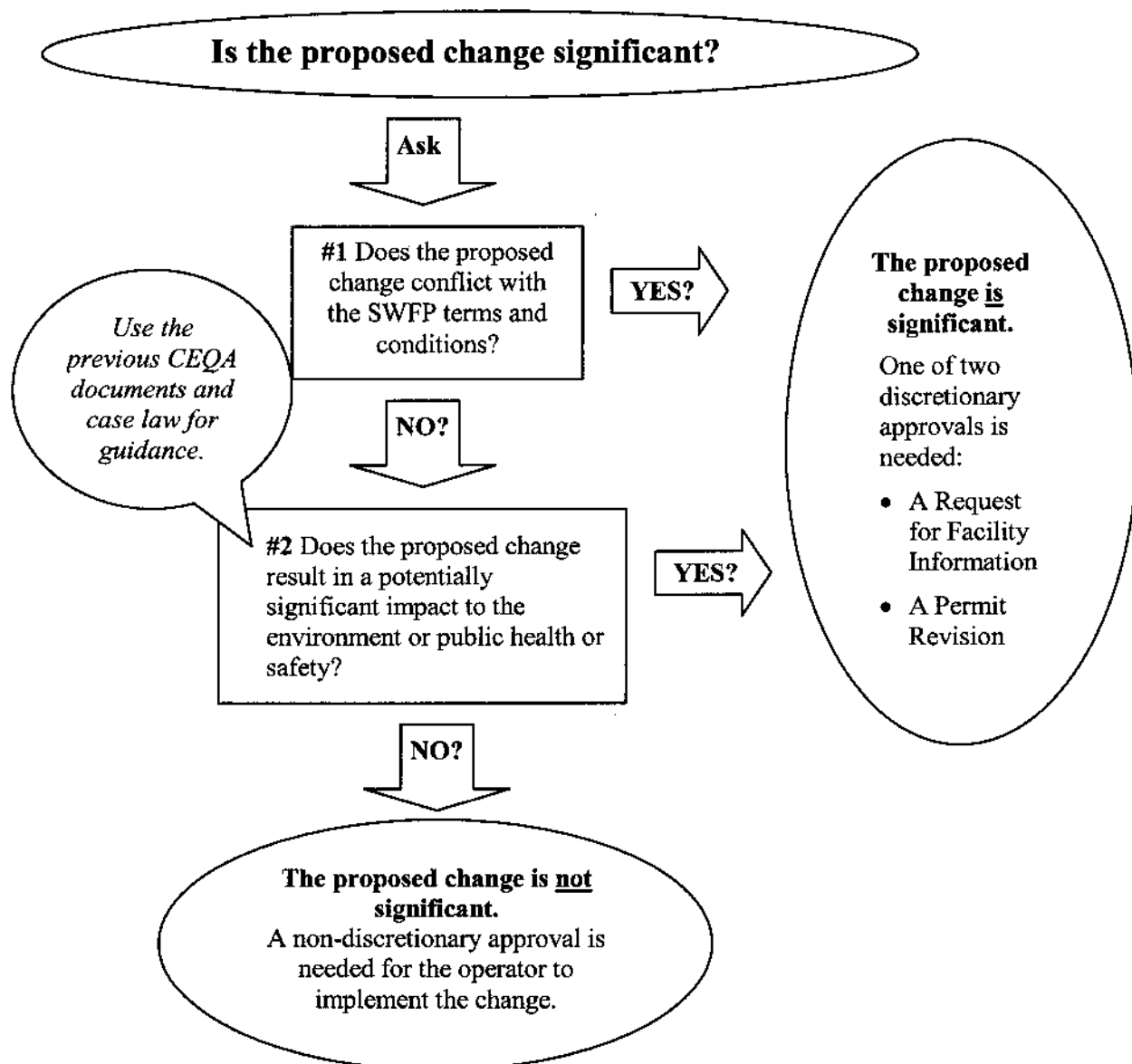
#### **1CCR §14: Authority and Reference Standard**

Because "significant change" has not previously been defined in statute or regulation, there has been inconsistent handling by enforcement agencies (EA) of changes proposed by operators of a solid waste facilities. The chaptered Assembly Bill 1497 (Montañez) statutorily obliged the CIWMB to adopt regulations that define "significant change in the design or operation of the solid waste facility." However, the CIWMB staff has instead developed a "decision tree" model to determine "significance of the change" and the associated required level of review and approval. Within the model, the word "significant" has been removed from "change." By dropping the term "significant," completely, the informal draft regulations can not be consistent with the intent of the legislation, the statutes, and the "Authority and Reference" standard provided by 1CCR §14 which requires agencies to adopt or amend regulations for which they are expressly permitted or obliged to do so.

We suggest that the definition of "significant change" be rooted in the California Environmental Quality Act (CEQA) similar to 14CCR17225.800 is for waste tire facilities. Fourteen CCR §17225.800 provides that for the purposes of permit issuance, (or PRC §42812), "substantial change" means

...any change that may cause a significant effect on the environment. Significant effect on the environment shall have the same meaning as provided in the State California Environmental Quality Act (CEQA) Guidelines. The determination of significant effect shall be made in accordance with section 15064 of the State CEQA Guidelines (Title 14 of the California Code of Regulations). We suggest for purposes of meeting the mandates and intent of AB 1497, and the purposes of Title 14, "substantial change" has the same meaning as "significant change."

There is substantial guidance, case law, and local, state, and federal acceptance of what is significant as embodied by CEQA and its associated processes. It is also, conveniently, rooted in the mission of protecting public health and safety and the environment. This definition of "significant change" would define the parameters that put any change into either a discretionary or non-discretionary category. We propose removing the Modified Permit process and simplifying the guidance with the following diagram.



Categorizing changes in this way will ensure greater consistency and allow EAs the ability to procedurally determine, using CEQA as a basis, whether changes that may be significant at one facility are not significant at another.

As for the Modified Permit process, neither statute nor the chaptered bill text call for the CIWMB to develop a new Modified Permit process or to clarify the level of consistency of the permit application to local land use entitlements. Questions of local land use fall outside of the scope of the authority of responsible agencies such as the LEA and the CIWMB. Altering the scope of the power conferred upon the CIWMB through the statutes is also inconsistent with §14.

### **1CCR §16: Clarity Standard**

The draft regulatory language also fails to comply with the 1CCR §16 "Clarity" standard by describing practices which conflict with the description of the regulation's desired effect. The goal of the regulation, as articulated by the author, Assembly Member Cindy Montañez, is to ensure that solid waste landfills throughout the state are operated in a manner that protects public health and the environment by increasing the ability of communities to participate in decisions about local landfills. Failing to define "significant change" and allowing previously held public meetings (up to one year-old) to substitute for the AB 1497 required application public hearings do not increase the ability of communities to become properly informed. AB 1497 amended the Public Resources Code §44004 (h)(1)(A) to require the EA to hold at least one public hearing on the proposed determination. A consistent statewide definition of "significant change," and distinct meetings are needed to inform the public of EA decisions to revise a permit so that all stakeholders, the public and operators alike, are consistently informed. We suggest that the regulations remain true to the intent of the legislation.

For similar reasons we continue to disagree with the proposed regulatory language aimed to track community outreach efforts. The proactive environmental justice (EJ) and community interaction suggested by the phrase "outreach efforts" is not met by a collection of the proposed operator-provided lists of all hearings held and notices distributed applicable to the proposed permit action. Aggressive reporting mechanisms during the review of permits and revisions already exist; each agenda item on every permit or permit revision now includes a comprehensive summary of EJ activities and community outreach efforts. While we value community outreach in its generally understood definition, we request that the CIWMB redefine their definition within this regulation, as a simple log does not insure that community outreach efforts are as intended by Assembly Member Montañez.

In the same vein, Section §16 (3) clearly states that the CIWMB is obligated to use terms that have meanings "generally familiar" to those "directly affected by the regulation," such as operators and the public. In both workshops, the CIWMB has expressed their difficulty in reaching a definition. As previously discussed, we suggest that the CIWMB use the definition of "substantial change" already embodied in 14CCR17225.800 and simply substitute "substantial" with "significant".

In other words, the standard for whether a change is "substantial" under 17225.800 (and PRC §42812) is the same as the standard for whether the change is significant for all other waste facilities and permits. The term "substantial" or "significant" and its link to the CEQA and permitting process serves to clearly identify when a discretionary project is also a "CEQA project" and subject to environmental review and the permit revision process. By definition, it also establishes a benchmark for non-discretionary permit changes (or "non-discretionary projects" or "administrative" changes), which would not be a "significant change" and consequently not a "CEQA project." For these

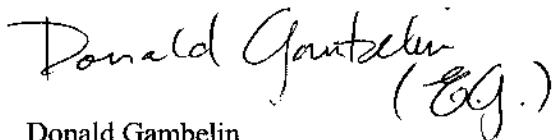
administrative-type changes, (changes where a text change is necessary to the permit, but the text change does not facilitate a significant design or operation change), existing CEQA law and the Permit Streamlining Act already provide for an "expedited" permit revision process. An EA would be able to advance a non-discretionary permit change to the CIWMB expeditiously when it is not subject to CEQA.

In a final effort to remain consistent and true to the legislative intent and with 1 CCR §16, if the CIWMB goal is to "apply to other solid waste operations and facilities [Construction, Demolition and Inert Debris] regulatory requirements," we request that the CDI surprise random inspection regulations provided in Title 14 be applied directly to all facility types. We believe the suggested language below, taken from 14 CCR §17383.6 (g) and §17388.3 (b) addresses the application, the permissiveness, the surprise and flexibility sought.

*Solid waste operations shall be inspected as necessary by the EA to verify compliance with State Minimum Standards. Inspections shall be conducted monthly, unless the EA determines a lesser frequency is sufficient, but in no case shall the inspection frequency be less than annual. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.*

We understand that the Solid Waste Industry Group will be submitting a letter reflecting a similar message. By not clearly writing regulations following the requirements of the statutes, this will be a regulatory package that neither addresses the author's concern for public process nor an operator's need for statewide consistency. Please contact me at (415) 875-1194 if you have any questions of require further information regarding our concerns.

Sincerely,

A handwritten signature in dark ink that reads "Donald Gambelin" followed by "(E.G.)" in parentheses.

Donald Gambelin  
Vice President  
Environment & Planning

Cc: Cindy Montañez, California Assembly Member  
Rosario Marin, CIWMB Board Chair  
Carl Washington, CIWMB Board Member  
Rosalie Mulé, CIWMB Board Member  
Cheryl Peace CIWMB Board Member  
Howard Levenson, Deputy Director, Permitting & Enforcement  
Mark de Bie, CIWMB Permitting and Enforcement